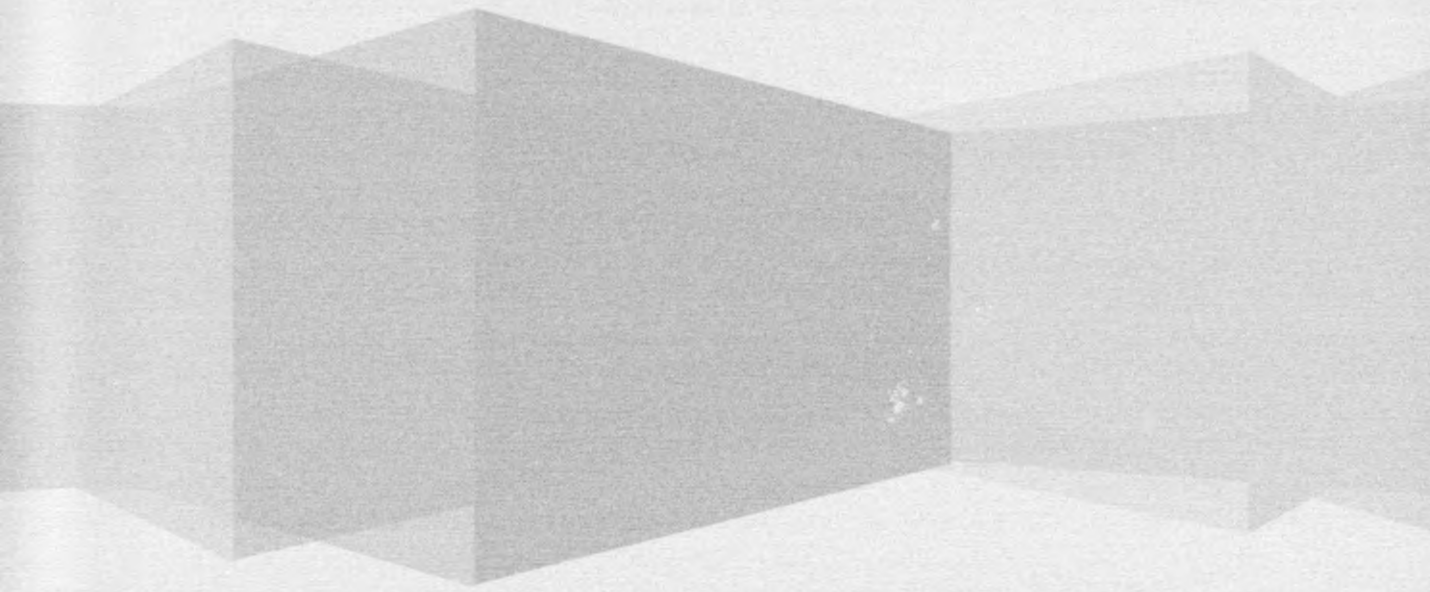
BRITISH COLUMBIA

Financial Services Tribunal
2014-2015 Annual Report



BRITISH COLUMBIA

Financial Services Tribunal

April 23, 2015

The Honourable Michael de Jong, Q.C.
Minister of Finance
PO BOX 9048
STN PROV GOVT
VICTORIA, BC
V8W 9E2

Dear Minister de Jong:

Re: Financial Services Tribunal 2014-2015 Annual Report

I am pleased to submit to you the Annual Report of the Financial Services Tribunal ("FST") for the fiscal year beginning April 1, 2014 and ending March 31, 2015. This report is submitted pursuant to section 242.1 (5) (d) of the *Financial Institutions Act*.

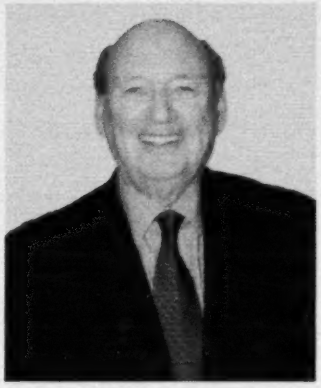
Sincerely,

M. Mourton

Maurice R. Mourton
Chair
Financial Services Tribunal

Enclosure

Message from the Chair



While the number of cases remains very small for one tribunal, we do provide an important outlet for individuals who wish to contest, at a reasonable cost, decisions made by the six regulatory bodies for which we have oversight responsibility.

The tribunal has only two members and is awaiting the appointment of a third member (to replace one that retired) which will ensure our continued high level of efficiency.

I would be pleased to answer any questions that the reader of this report may wish to ask.

M. Mourton

Maurice R. Mourton
Chair

Mandate

The Financial Services Tribunal (FST) hears appeals from institutions and individuals who want to contest enforcement decisions made by the:

- Insurance Council of British Columbia;
- Real Estate Council of British Columbia;
- Superintendent of Real Estate;
- Superintendent of Pensions;
- Registrar of Mortgage Brokers; and,
- Superintendent of Financial Institutions.

The FST has jurisdiction to hear appeals under the following British Columbia statutes:

- *Financial Institutions Act;*
- *Credit Union Incorporation Act;*
- *Mortgage Brokers Act;*
- *Pension Benefits Standards Act;*
- *Real Estate Services Act; and,*
- *Real Estate Development Marketing Act.*

Tribunal Membership

At the start of this reporting period the FST board membership consisted of:

TRIBUNAL MEMBER	ROLE	TERM EXPIRY
Maurice M. Mourton	Chair	November 23, 2016
Paula Barnsley	Member	November 23, 2014
Patrick Lewis	Vice-Chair	November 30, 2016

At the end of the reporting period the FST had one vacancy (due to the expiration of the term of appointment for one member) which the FST expects to be filled early in the next reporting period.

BIOGRAPHIES FOR THE TRIBUNAL MEMBERSHIP AT THE END OF THE REPORTING PERIOD ARE AS FOLLOWS:

MAURICE M. MOURTON, CHAIR

Mr. Mourton has over 45 years experience in the banking industry and held a variety of senior executive positions. He was head of Human Resources for the Bank of Montreal and subsequently held senior positions in Quebec, Ontario, the U.K., and British Columbia. Joining the HSBC Group in 1986, he served in a variety of senior executive positions including being a member of the Executive Committee. He retired from the HSBC Group in 2000 as Executive Director, Brazil. From 2004 to 2007 Mr. Mourton served as Chair of the Ubiquity Bank of Canada.

Always active in the community, Mr. Mourton has served on numerous boards. He has chaired the Children's Miracle Network Telethon, the Children and Women's Health Center of BC, the Canadian International Dragon Boat Festival, the Canadian Bankers Association of BC, the Canadian Genetic Diseases Network (a National Center of Excellence), the Arthritis Society of BC, the BC Transplant Society and the Child and Family Research Institute. In addition he has been a director of the International Finance Center, Endeavor, the Vancouver Opera, the BC Children's Hospital Foundation, the Vancouver Foundation, the College of Physicians and Surgeons of BC and Community Living BC, and was a member of the Health Professions Review Board. Currently Mr. Mourton is a director of the Northern Trust Company and a Governor of BC Children's Hospital Foundation.

PATRICK F. LEWIS, VICE-CHAIR

Patrick Lewis is a Partner at the boutique litigation firm, Sugden, McFee & Roos LLP, in Vancouver, practicing exclusively in the area of civil litigation with an emphasis on commercial disputes. He was admitted as a barrister and solicitor to the Bar of the Province of British Columbia on June 14, 1985. The cases Mr. Lewis handles include: securities litigation; mining disputes; professional liability claims and defence thereof involving lawyers, doctors, engineers

and accountants; corporate litigation; insurance litigation; real property disputes; defamation claims; banking litigation; employment disputes; and, personal injury actions.

Mr. Lewis has appeared in all levels of court in British Columbia, the Federal Court of Canada and has been involved in opposing applications for leave to appeal to the Supreme Court of Canada in a number of cases. Mr. Lewis is a member of the BC Branch of the Canadian Bar Association, Civil Litigation Subsection. He is also a member of the Trial Lawyers Association of British Columbia, a guest lecturer for the Continuing Legal Education Society of British Columbia and a Moot Court Judge at the U.B.C. Law School.

Operations

Effective April 1, 2010, the administrative support functions of the FST were moved from the Financial Institutions Commission (FICOM) in Vancouver and consolidated with the Environmental Appeal Board/Forest Appeals Commission Appeals Office (Appeals Office) in Victoria.

In addition to the FST, the Appeals Office provides administrative support to five other adjudicative tribunals. This clustering of the administrative support for eight independent appellate tribunals has been done to assist government in achieving economic and program delivery efficiencies by allowing greater access to resources while, at the same time, reducing administration and operating costs. The additional tribunals include the:

- Community Care and Assisted Living Appeal Board;
- Health Professions Review Board;
- Hospital Appeal Board;
- Industry Training Appeal Board; and,
- Oil and Gas Appeal Tribunal.

This move has resulted in significant savings to government for the operation of the FST through a shared services cluster approach which takes advantage of synergy and assists government in achieving economic and program delivery efficiencies.

This arrangement has been in operation for 5 years now and has proven to be an effective and efficient means for providing administrative support to the FST which in turn enables the FST to effectively and efficiently fulfill its mandate to the public.

Contact Information

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WEBSITE:	http://www.fst.gov.bc.ca/

Appeal Activity and Decisions Issued

Appeals Filed

2015-RSA-001

Between April 1, 2014 and March 31, 2015, there was one new appeal filed with the FST. The appeal was filed by the Superintendent of Real Estate (the "Superintendent") contesting a consent order between the Real Estate Council ("Council") and a managing broker under the *Real Estate Services Act* (the "*Act*"). The broker submitted an initial proposal which was not accepted and later provided a revised proposal under section 41 of the *Act* that was accepted by Council's Consent Order Review Committee (the "Committee"). Based on the revised proposal the Committee found that the broker committed professional misconduct within the meaning of section 35(1)(a) of the Act. The terms of the consent order agreed to by the broker and Council included a reprimand, a discipline penalty in the amount of $10,000, costs of enforcement and a direction that the broker complete the Broker's Remedial Education Course. The Superintendent appealed the consent order under section 54(1)(d) of the *Act* and seeks to have the matter of penalty remitted back to Council for reconsideration and for costs of the appeal on the grounds that Council failed to provide adequate reasons in support of its decision on penalty. The Superintendent also seeks leave to amend its notice of appeal to add the ground that Council erred in law by relying on an improper record, in particular, the proposal that had been previously rejected and the minutes of the Committee's consideration of that prior proposal. The written submissions process closes after the end of this reporting period and a decision will be issued during the next reporting period.

Decisions Issued

There was one decision issued by the FST during this reporting period as follows.

2014-FIA-001

Decision Date:	May 29, 2014
Appellant:	Ashish Kulkarni
Respondents:	Insurance Council of British Columbia Financial Institutions Commission
Act:	*Financial Institutions Act*, R.S.B.C. 1996, c. 141

Issue: Whether the Insurance Council could reasonably conclude that the penalty imposed was appropriate in the circumstances based on the evidence before it.

Disposition:	**Appeal allowed in part. The Insurance Council's decision was varied by reducing the period of suspension from 18 months to 6 months and reducing the fine from $1,000 to $500.**
Appeal Decision:	http://www.fst.gov.bc.ca/pdf/2014-FIA-001(a).pdf

In response to an intended decision made by the Insurance Council of British Columbia ("Council") after an investigation into allegations that the Appellant improperly accessed information from a database of the Insurance Corporation of British Columbia ("ICBC"), the Appellant requested a hearing pursuant to section 237(3) of the *Act*. An oral hearing was held by Council before a 3-person panel (the "Hearing Committee"). The Hearing Committee submitted to Council a Report of the Hearing Committee outlining its findings and recommended disposition. Council considered the Report and made the Order under appeal.

The Appellant was a 22 year old student with a Level 1 general insurance license working primarily part-time, with periods of full time employment during the summer months. He accessed the ICBC database for the purpose of determining the type of motor vehicle driven by the ICBC president as he was curious to see what kind of car an ICBC president drove.

The Hearing Committee found that the Appellant only improperly accessed the ICBC database once for personal reasons and that he had no intention of disclosing any of the information accessed. However, the Hearing committee also found that the Appellant's denials, lack of forthrightness, and his attempts to cover up his actions once his breach had been discovered raised serious flags, seriously brought into question his trustworthiness and his ability to act in good faith and in accordance with the usual practice of the business of insurance.

The Appellant appealed on the grounds that the discipline imposed was unreasonable. He referred to mitigating factors which he submitted Council should have given more consideration to, namely: his age (20 years old at the time of the incident), relative inexperience (3 years mostly part time), and low level of insurance licence (Level 1); his good character before and after the misconduct; his lack of training in, and misunderstanding of, privacy laws pertaining to access of ICBC records; and other factors such as: lack of intent, questionable harm by learning the information he gleaned, his subsequent rehabilitation acts and financial hardship. In addition, the Appellant submitted that Council's reference to prior discipline cases were not representative of suitable comparisons for the purpose of establishing like penalties and was unreasonable. Council argued that this was a serious breach of confidentiality, compounded by devious behavior in which the Appellant purposely misled the investigation. Also the Respondents submitted that there was a growing need to send a message that this type of behaviour is unacceptable.

The FST reviewed the comparative authorities considered by Council in determining the penalty to be imposed and was satisfied that the situations in those cases were sufficiently distinguishable from this case such that a variation of the penalty was warranted. The FST agreed that it is worth emphasizing that by lying and misleading the investigation the Appellant worsened the breach of conduct and that the Appellant's conduct during the investigation distinguished this case from those where no suspension was imposed. However, the FST found that in light of the Appellant's circumstances and the nature of the access/breach, the period of suspension imposed by Council was unreasonable. The FST further found that while it is necessary at times to set an example to deter others, there must also be some element of proportionality in assessing the penalty.

Matters Outstanding at end of Period

There is one matter outstanding at the end of this reporting period.

Judicial Review of FST Decisions

There were no decisions rendered by the Supreme Court of British Columbia on judicial review of any FST decisions issued in this reporting period; however, two matters are currently outstanding before the Court.

Statement of Financial Performance

(For the fiscal year ended March 31, 2015)

In fiscal year 2014/2015, the FST received $850 in recoveries from appeal filing fees and incurred expenses of $9,814 as detailed below in this five year chart. Although there was only one new appeal filed during this reporting period, the FST also p vided written submissions, via legal counsel, in regard to two matters currently under Judici l Review by the Supreme Court of BC.

Operating Result	***2010/2011 $***	***2011/2012 $***	***2012/2013 $***	***2013/2014 $***	***2014/2015 $***
Recoveries	1,700	850	2,550	850	850
Expenses	(29,371)	(71,202)	(23,826)	(14,511)	(9,814)
Net	(27,671)	(70,352)	(21,276)	(13,661)	(8,964)
Direct Expenses	***2010/2011 $***	***2011/2012 $***	***2012/2013 $***	***2013/2014 $***	***2014/2015 $***
Salaries and Benefits	0	0	0	0	0
Professional Services	11,130	61,722	6,690	8,470	7,557
Board Fees & Expenses	18,241	9,300	16,607	5,839	2,217
Other	0	180	529	202	40
Total direct Expenses	29,371	71,202	23,826	14,511	9,814
Total FST Expenses	**$ 29,371**	**$71,202**	**$23,826**	**$14,511**	**$9,814**